SOME FEATURES OF MODERN TRENDS IN LEGAL RESEARCH

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Abstract. *The article deals with current situation in legal research. The main paradigms in legal research are revealed. Special attention is paid to the problems of legal understanding, the connections in the methodology of jurisprudence and the theory of law. The processes of relativism of law and the epistemology of knowledge in law are analyzed.*

Keywords: *law, legal research, jurisprudence, legal understanding, science, constructedness, methodology.*

НЕКОТОРЫЕ ОСОБЕННОСТИ СОВРЕМЕННЫХ НАПРАВЛЕНИЙ ЮРИДИЧЕСКИХ ИССЛЕДОВАНИЙ

Аннотация. *В статье рассматривается современная ситуация в области правовых исследований. Выявлены основные парадигмы в правовых исследованиях. Особое внимание уделено проблемам правопонимания, связям в методологии правоведения и теории права. Анализируются процессы релятивизма права и эпистемологии познания в праве.*

Ключевые слова: *право, правоведение, юриспруденция, правоведение, наука, конструктность, методология.*

INTRODUCTION

In modern science today, the intersection of "paradigms" is found - most scientists adhere to the classical legal understanding, some non-classical and only a few post-classical. Nevertheless, a change in the type of rationality, sooner or later, but inevitably, will also come to jurisprudence. Therefore, the way out of the worldview and methodological crisis in which legal science finds itself in the modern world is not in the rejection of “fundamental science”, primarily philosophy and theory of law, but in its reorientation into postclassical philosophy and theory of law, postclassical jurisprudence. Postclassical jurisprudence in the epistemological (methodological) sense must meet the following criteria: it must be a critique of classical jurisprudence, primarily its dogmatism, claims to be universal and apodictic; should be a reflection of the second order: regarding reality, its social conditioning and the subject of knowledge; it should recognize and justify the multidimensionality of law (the many modes of being: not only as a norm, legal order and legal consciousness, but also as an institution, the practice of its reproduction and a person constructing and reproducing the institution); it should postulate the constructedness and at the same time the socio-cultural conditionality of legal reality; finally (although this list can be continued), it should become “human-centric”, that is, it should consider a person as the creator of legal reality, reproducing it with his practices. From the stated foundations of postclassical jurisprudence, it is obvious that there is a need for at least reflection, and as a maximum for the transformation of its methodological foundations.

MATERIALS AND METHODS

One of the most pressing problems for modern theory of law, as well as for the entire legal science, is the pluralism of legal understanding. It is no secret that today there are different approaches to understanding and theoretical understanding of law, largely due to its complexity

and multidimensionality. So, in addition to the three traditional types of legal understanding (legal positivism, the theory of natural law, sociology of law), “non-classical” or “post-classical” types of legal understanding are actively developing today. These include, for example, anthropology of law, phenomenology of law, critical legal research, feminist theory of law, legal existentialism and etc. Now it is important to emphasize not exactly what concepts of law exist, but that they give a different assessment of legal reality, primarily legislation, interpret basic legal concepts in different ways and qualify legally significant situations. The complexity is aggravated by the fact that none of the types of legal thinking today is able to convince its opponents of its own rightness, greater validity. There can be only one way out in the theoretical aspect: to constantly justify one's own position in a dialogue with other points of view.

The foregoing clearly indicates that in the current situation of epistemological uncertainty, the role of general theoretical understanding of law is cardinally increasing. It is the theory of law, which includes theories of special legal disciplines, that is obliged to take on the function of reflecting the methodology of all jurisprudence. Therefore, it should include such interdisciplinary problems as the theory of legal form, theory of evidence, legal technique, etc. Only in this way theoretical studies of law will fulfill their ontological (substantiation of law) and methodological (development of methods for scientific research and practical application of law) function. Let us formulate several principles of the postclassical methodology of jurisprudence. Principles of uncertainty and complementarity. From the principle of quantum physics, the postulate of uncertainty affirms the incompleteness of our knowledge due to both the potential inexhaustibility of the world and the limitations of the human mind. Hence, the impossibility of a complete, apodictic description, explanation, and even more so prediction of the behavior of any more or less complex social phenomenon or process (to which law undoubtedly belongs) is obvious. Moreover, the uncertainty principle does not allow one to give an unambiguous assessment of any social (and legal) phenomenon or process due to the impossibility of calculating its latent dysfunctions and long-term consequences, and thereby clarifying (at least quantitatively) the social effect of legal norms and institutions and law.

The principle of complementarity postulates the absence of a single privileged point of view on the object and the dependence of the picture of the object on the method used for its construction and cognition. From this we can conclude that the methodology has priority over the ontology of law, or that the picture of legal reality depends on the point of view of the observer and the methods for determining - constructing - the object (legal reality) based on the accepted methods. The principle of complementarity at the same time postulates the inexhaustibility of measurements, points of view on the object and, as a result, the multiplicity of types of legal understanding. The advent of "postclassics" is due to the linguistic "turn", which can be called the principle of sign-symbolic mediation of all social (and legal) phenomena. Any action, the subject of the material world, the person himself becomes a social phenomenon, only being signified and meaningful in sign-symbolic forms. Language (more precisely, the person using the language) designates by acts of nomination, classifies, categorizes and qualifies social situations, turning some of them - which seem to be the most significant - into legal ones. Thus, the construction and reproduction of legal reality occurs with the help of sign forms, the most important of which is language.

Contextualism, historical and socio-cultural conditionality or relativity of law, replacing the universalism inherent in classical legal understanding, implies relativity, relativism of law in

relation to society, represented by social phenomena (politics, economics, culture, etc.) and reproduced by people's practices. The type of society with the help of legal culture determines the content and forms of law. At the same time, this does not negate the universality of law, which lies in its functional significance.

Relativism is one of the principles of the postclassical picture of the world and, accordingly, of epistemology. He speaks, first of all, about the relativity of knowledge about an object included in subject-subject interactions and intercultural context. Knowledge about an object is always incomplete, limited, conditioned by prevailing values, ideology, social doxa, scientific traditions, etc., and therefore relative.

RESULTS

All this also applies to legal knowledge, which, from the point of view of postclassical epistemology, has only relative autonomy in the environment of socio-humanitarian knowledge and is conditioned by the socio-cultural context (primarily by the dominant types of legal understanding), the dominant picture of the world, and worldview. Legal science is a "particular social theory", the content of which is determined by its connection with social philosophy and other social sciences, which has only relative autonomy. If knowledge about law is relative (socially conditioned), then Hegel's thesis is substantiated from the postclassical point of view that law is a moment, a side of society. In connection with the foregoing, it is possible to formulate the ontological principle of the relativism of law: law is a social phenomenon due to interactions with other social phenomena, outside and without which law does not exist, and with society as a social whole. This suggests a thesis that may seem shocking: there are no “pure” legal phenomena, just as there is not and cannot be a “pure system of law” by G. Kelsen. Law, like any social institution, although it does not have a single and single referent, is multifaceted, exists in the social world in the form of human interactions mediated by social (interiorized into individual) ideas. In these interactions, the psyche (psychic phenomena), culture, language, and often economics, politics, etc. always coexist. d. is possible only analytically. Thus, there are no legal phenomena (laws, individual acts,

The foregoing does not mean that the relativity of law is arbitrariness and anarchy. As noted above, the relativity of law is the dependence and conditionality of law by society. Law, from the point of view of the dialogic sociology of law developed by the author, like any other social institution, performs a social function: it ensures the normal functioning of the society (at least self-preservation, at the maximum prosperity). Law does this by means of regulation of the most significant social relations; economy - using the production and distribution of material goods; politics - by making political decisions, etc. This is precisely the essence of law, the minimum of its universality. Why minimum? Because the content is "naked abstraction", filled with specific content in different historical epochs and in different cultures-civilizations. The specific content of law is precisely determined by the context of the historical era and culture-civilization. The relativity of law (more precisely, legislation) does not make it possible to formulate universal substantive criteria, for example, criminal law prohibitions. Crime and criminality are relative, conventional (“contractual” – as legislators “agree”) concepts, they are social constructs that only partially reflect individual social realities: some people kill others, some take possession of the things of others, some deceive others, etc. But after all, the same actions in content may not be recognized as crimes: killing an enemy in war, murder by sentence (death penalty), taking possession of the things of another by a court decision, deception by the

state of its citizens, etc." Recognizing the validity of the ideas of the famous criminologist, at the same time it needs to note that without a criminal prohibition, for example, murder, no society is able to exist, although the wording of this *corpus delicti*, of course, sometimes differs significantly. Therefore, in any society there are those norms that ensure its reproduction. The problem of their identification is one of the most urgent for the theory of law. Today it is impossible to formulate universal substantive criteria for their explication. But that doesn't mean they don't exist. To detect them, a sociological and legal study of this particular society is required, designed to fix, including by "qualitative methods", widespread.

DISCUSSION

The practical turn involves the identification of legal practices that reproduce (both traditionally and innovatively) legal reality. It is practices that form the content of legal dogma and allow us to show the mechanism of legal institutionalization. In legal practices, there is an intersection of personal intentions (needs, interests, goals) with the requirements of institutions. Legal culture produces the socialization of a person - the bearer of the status of a subject of law, an actor, and includes him in the mechanism of reproduction of the legal system. Thus, the practical turn focuses on dynamism and procedurality instead of the static nature of law. The essence of the practical turn in relation to jurisprudence is that law exists only if it (its iconic expression) is valid, i.e. is implemented in the practices of people – the bearers of legal statuses. The action (and hence the being) of law is the behavior and mental activities of people, complementary and mutually dependent on each other as an ideal (mental) meaning and personal meaning complements the practical action and its result.

An even more important task, which allows the sociology of law to turn to face the practical needs of jurisprudence, is to demonstrate the operation of law. What does this mean? In the dogmatic sense of the word, it is a legal action, i.e., the entry into force of a normative legal act. In the sociological sense, it is a multi-level activity to transform the worldview into the principles of law, legal constructions, a system of forms of external expression of the norms of law, the prevailing methods of practical activity, traditions and customs in which mass practices are embodied, the transformation of all this into skills (personal knowledge) of a particular a person in relation to his interests (which, in turn, represent the intersection of the interests of a social group and personal motives). In this process, which expresses the essence of the practical turn, *practices prevailing in the relevant field of jurisprudence, social ideas about law (typical legally significant situations),* personal background knowledge (or legal personal stereotypes), personalization of typifications and idealizations, individual meanings that personalize dominant meanings in relation to legally significant situations in their interpretation, as well as motivation.

CONCLUSIONS

The principle of dialogicity of law is the general quintessence of postclassical methodology from the point of view of the author's position, developed within the framework of a practical textbook. Dialogicity is the content of sociality as such, as it is a mediation, complementarity of the above points (principles in the ontological sense) of social (and legal) reality. Dialogicity as an acceptance of the position of a socially significant other forms the content of the legitimation of legal institutions and norms, as it correlates the requirements of society (translated through the status of a socially significant Other) with personal intentions and needs. Any social phenomenon is dialogical in the sense that it is both unique and typical (socially), and a social institution (for example, law) is a system of connections between

impersonal social statuses objectified in the corresponding mental representation, and the realization of these connections in actually occurring interactions of personified individuals. In other words, dialogue is the I-You relationship, behind which it is always hidden, it is a unique meeting of two personalities, which is transformed into a typed impersonal connection, and then into subsequent actual interactions. In the world around us, in fact, there are single people and interactions between them. However, due to the need to economize thinking, specific life situations, as well as their participants, are objectified by human consciousness into static forms, are brought (in jurisprudence, there is a special term for this - qualify) under familiar typical interactions. By virtue of this objectification, they are endowed (in the mass representation) with supernatural, supra-individual features and "turn" into substantial entities. At the same time, people in such situations behave as if they were so (supernatural) in reality. As a result, social reality is "doubling": social roles are "built on top" of actual interactions, expressed, for example, in the legal statuses of non-personalized subjects. The proposed principles of the postclassical methodology of law, open in terms of their number and content, determine the object and subject of legal science.

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